

SENATE BILL NO. 125

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATUTES ON MENTAL COMPETENCY OF THE ACCUSED; REVISING PROCEDURES FOR PSYCHOLOGICAL OR PSYCHIATRIC EXAMINATION AND TREATMENT OF CRIMINAL DEFENDANTS; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REGARDING EXAMINATIONS; PROVIDING SENTENCING ALTERNATIVES; IMPLEMENTING PROCEDURES FOR INVOLUNTARY MEDICATION OF DEFENDANTS UNDER CERTAIN CIRCUMSTANCES; CLARIFYING THE PROCEDURES FOR TRANSFER OR CONDITIONAL RELEASE OF PERSONS COMMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 3-5-901, 46-14-202, 46-14-206, 46-14-221, 46-14-301, AND 46-14-312, 53-21-127, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1.~~ Section 3-5-901, MCA, is amended to read:

~~"3-5-901. State assumption of district court expenses.~~ (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

~~(a) salaries and benefits for:~~

~~(i) district court judges;~~

~~(ii) law clerks;~~

~~(iii) court reporters, as provided in 3-5-604;~~

~~(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and~~

~~(v) other employees of the district court;~~

~~(b) in criminal cases:~~

~~(i) fees for transcripts of proceedings, as provided in 3-5-604;~~

~~(ii) witness fees and necessary expenses, as provided in 46-15-116;~~

~~(iii) juror fees and necessary expenses;~~



- 1 ~~——— (iv) for a psychiatric evaluation under 46-14-202, the cost of the examination and other associated~~  
 2 ~~expenses, as provided in 46-14-202(4)(a)(i) and (4)(a)(iii) 46-14-202(5)(a)(i) and (5)(a)(iii); and~~  
 3 ~~——— (v) for a psychiatric evaluation under 46-14-221, the cost of the examination and other associated~~  
 4 ~~expenses, as provided in 46-14-221(5)(8);~~  
 5 ~~——— (c) except as provided in 47-1-201(5), the district court expenses in all postconviction proceedings held~~  
 6 ~~pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and~~  
 7 ~~appeals from those proceedings;~~  
 8 ~~——— (d) except as provided in 47-1-201(5), the following expenses incurred by the state in federal habeas~~  
 9 ~~corpus cases that challenge the validity of a conviction or of a sentence:~~  
 10 ~~——— (i) transcript fees;~~  
 11 ~~——— (ii) witness fees; and~~  
 12 ~~——— (iii) expenses for psychiatric examinations;~~  
 13 ~~——— (e) except as provided in 47-1-201(5), the following expenses incurred by the state in a proceeding held~~  
 14 ~~pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal~~  
 15 ~~custody of a youth, or termination of the parent-child legal relationship and permanent custody:~~  
 16 ~~——— (i) transcript fees;~~  
 17 ~~——— (ii) witness fees;~~  
 18 ~~——— (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other~~  
 19 ~~person having physical or legal custody of the youth except for expenses for services that a person is eligible to~~  
 20 ~~receive under a public program that provides medical or psychological evaluation;~~  
 21 ~~——— (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and~~  
 22 ~~——— (v) expenses associated with court-ordered alternative dispute resolution;~~  
 23 ~~——— (f) except as provided in 47-1-201(5), costs of juror and witness fees and witness expenses before a~~  
 24 ~~grand jury;—~~  
 25 ~~——— (g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage~~  
 26 ~~on children, as required in 40-4-226, and expenses of education when ordered for the investigation and~~  
 27 ~~preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);~~  
 28 ~~——— (h) except as provided in 47-1-201(5), all district court expenses associated with civil jury trials if similar~~  
 29 ~~expenses were paid out of the district court fund or the county general fund in any previous year;~~  
 30 ~~——— (i) all other costs associated with the operation and maintenance of the district court, including contract~~

- 1 costs for court reporters who are independent contractors; and
- 2 ~~—— (j) costs associated with the operation and maintenance of the youth court and youth court division~~
- 3 ~~operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities~~
- 4 ~~identified in Title 41, chapter 5.~~
- 5 ~~—— (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the~~
- 6 ~~office of court administrator shall reimburse the county within 30 days of receipt of a claim.~~
- 7 ~~—— (3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not~~
- 8 ~~include:~~
- 9 ~~—— (a) costs for clerks of district court and employees and expenses of the offices of the clerks of district~~
- 10 ~~court;~~
- 11 ~~—— (b) costs of providing and maintaining district court office space; or~~
- 12 ~~—— (c) charges incurred against a county by virtue of any provision of Title 7 or 46."~~

13

14 ~~—— **Section 2.** Section 46-14-202, MCA, is amended to read:~~

15 ~~—— "**46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written~~

16 ~~motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district~~

17 ~~court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed~~

18 ~~clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana~~

19 ~~state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice~~

20 ~~registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental~~

21 ~~condition.~~

22 ~~—— (2) The court may order the defendant to be committed to a hospital or other suitable facility for the~~

23 ~~purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to~~

24 ~~be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or~~

25 ~~advanced practice registered nurse retained by the defendant be permitted to witness and participate in the~~

26 ~~examination.~~

27 ~~—— (3) In the examination, any method may be employed that is accepted by the medical or psychological~~

28 ~~profession for the examination of those alleged to be suffering from mental disease or defect.~~

29 ~~—— (4) The court may order the defendant to comply with involuntary medication if it finds that the defendant~~

30 ~~meets the civil commitment criteria of 53-21-126 and that involuntary medication is necessary to protect the~~

1 ~~defendant or others or to facilitate effective treatment. The provisions of 53-21-127(6) apply to an order under~~  
 2 ~~this subsection.~~

3 ~~——— (5) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:~~

4 ~~——— (i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination~~  
 5 ~~was requested by the prosecution, the cost of the examination and other associated expenses must be paid by~~  
 6 ~~the office of court administrator, as provided in 3-5-904;~~

7 ~~——— (ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender~~  
 8 ~~Act, Title 47, chapter 1, and the examination was requested by the defendant or the defendant's counsel, the cost~~  
 9 ~~of the examination and other associated expenses must be paid by the office of state public defender;~~

10 ~~——— (iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender~~  
 11 ~~Act, Title 47, chapter 1, and the examination was jointly requested by the prosecution and defense counsel or~~  
 12 ~~the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination~~  
 13 ~~and other associated expenses must be divided and paid equally by the office of court administrator and the office~~  
 14 ~~of state public defender.~~

15 ~~——— (b) For purposes of this subsection (4) (5), "other associated expenses" means the following costs~~  
 16 ~~incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination,~~  
 17 ~~regardless of whether the examination is done at the Montana state hospital or any other facility:~~

18 ~~——— (i) the expenses of transporting the defendant from the place of detention to the place where the~~  
 19 ~~examination is performed and returning the defendant to detention, including personnel costs of the law~~  
 20 ~~enforcement agency by whom the defendant is detained;~~

21 ~~——— (ii) housing expenses of the facility where the examination is performed; and~~

22 ~~——— (iii) medical costs, including medical and dental care, including and costs of medication."~~

23

24 **Section 1.** Section 46-14-206, MCA, is amended to read:

25 **"46-14-206. Report of examination -- rulemaking.** (1) A report of the examination must include the  
 26 following:

27 (a) a description of the nature of the examination;

28 (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the  
 29 defendant;

30 (i) suffers from a mental disease or defect or a developmental disability, as defined in 53-20-102;

1 (ii) suffers from a mental disorder, as defined in 53-21-102, and may require commitment or is seriously  
 2 developmentally disabled, as defined in 53-20-102; or

3 (iii) is seriously developmentally disabled, as defined in 53-20-102;

4 (c) if the defendant suffers from a mental disease or defect or developmental disability, an opinion as  
 5 to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's  
 6 own defense;

7 (d) when directed by the court, an opinion as to the capacity of the defendant at the time of the alleged  
 8 offense to have a particular state of mind that is an element of the offense charged; ~~and~~

9 (e) when directed by the court, an opinion as to the capacity of the defendant at the time of the alleged  
 10 offense, because of a mental disease or defect or developmental disability, to appreciate the criminality of the  
 11 defendant's behavior or to conform the defendant's behavior to the requirement of the law;

12 (f) if the opinion of the psychiatrist, licensed clinical psychologist, or advanced practice registered nurse  
 13 examining the defendant indicates that the defendant lacked capacity to appreciate the criminality of the  
 14 defendant's behavior or to conform the defendant's behavior to the requirements of the law at the time of the  
 15 alleged offense, an opinion as to the defendant's capacity to do so at the time of the examination; and

16 (g) if the report concludes that the defendant lacks capacity to understand the proceedings against the  
 17 defendant and to assist in the defendant's own defense, an opinion as to whether the defendant is likely to regain  
 18 fitness to proceed in the reasonably foreseeable future if provided with treatment. If the report concludes that  
 19 the defendant is likely to regain fitness to proceed in the reasonably foreseeable future if provided with treatment,  
 20 the report must propose an individualized treatment plan to regain fitness, which may include a physician's or  
 21 advanced practice registered nurse's prescription of reasonable and appropriate medication that is consistent  
 22 with accepted medical standards or a protocol for arriving at the appropriate medication and dosages.

23 (2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate  
 24 in the examination, the report must state that fact and must include, if possible, an opinion as to whether the  
 25 unwillingness of the defendant was the result of the mental disease or defect or developmental disability.

26 (3) The department of public health and human services may adopt rules implementing the requirements  
 27 in subsection (1), establishing a standardized format for the organization and elements of the report, and adopting  
 28 nationally accepted standards for forensic examination and reporting that are consistent with this section."

29

30 **Section 2.** Section 46-14-221, MCA, is amended to read:

1           **"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- involuntary**  
 2 **administration of medication -- review -- expenses.** (1) The issue of the defendant's fitness to proceed may  
 3 be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is  
 4 raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the  
 5 finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the  
 6 finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the  
 7 hearing, the parties have the right to subpoena and cross-examine the psychiatrists ~~or~~, licensed clinical  
 8 psychologists, or advanced practice registered nurses who joined in the report and to offer evidence upon the  
 9 issue.

10           (2) ~~(a)~~ If the court determines that the defendant lacks fitness to proceed; and that it does not appear  
 11 that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against  
 12 the defendant must be dismissed, except as provided in subsection (7).

13           (3) If the court determines that the defendant lacks fitness to proceed and it appears the defendant will  
 14 become fit to proceed within the reasonably foreseeable future if treated, the court shall suspend the proceeding  
 15 against the defendant ~~must be suspended~~, except as provided in subsection ~~(4)~~ (7), and the court shall commit  
 16 the defendant to the custody of the director of the department of public health and human services to be placed  
 17 in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102,  
 18 of the department of public health and human services for so long as the unfitness endures or until disposition  
 19 of the defendant is made pursuant to this section, whichever occurs first.

20           ~~(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to~~  
 21 ~~proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication~~  
 22 ~~that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan,~~  
 23 ~~the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the~~  
 24 ~~petition.~~

25           (4) If the court orders commitment under subsection (3) and the report recommends medication, the  
 26 court shall hold a hearing prior to commitment and determine whether the defendant:

27           (a) meets the criteria for civil commitment and involuntary medication under 53-21-126 and 53-21-127;  
 28 or

29           (b) does not meet the criteria for civil commitment and involuntary medication and all of the following  
 30 factors exist:

- 1           (i) the state has a strong interest in timely prosecution of a serious crime;
- 2           (ii) medication is substantially likely to render the defendant competent to stand trial and substantially  
3 unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in  
4 conducting a defense;
- 5           (iii) alternative, less-intrusive treatments are unlikely to achieve substantially the same results; and
- 6           (iv) administering the medication is medically appropriate.
- 7           (5) (a) If the court determines that the elements of subsection (4)(a) or (4)(b) are present, the court may  
8 enter an order authorizing the chief medical officer of the facility to administer medication involuntarily using the  
9 process provided for in 53-21-127(6) if the defendant does not comply with prescribed medication. ~~If the~~  
10 ~~defendant refuses to comply, the chief medical officer or the chief medical officer's designee may administer~~  
11 ~~appropriate medication involuntarily. Medication may not be involuntarily administered to a patient unless the~~  
12 ~~chief medical officer of the facility or a physician designated by the court approves the administration prior to the~~  
13 ~~beginning of the involuntary administration and unless a medication review committee reviews the administration~~  
14 ~~prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after~~  
15 ~~the beginning of the involuntary administration.~~
- 16           ~~\_\_\_\_\_ (b) The medication review committee must include at least one person who is not an employee of the~~  
17 ~~facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written~~  
18 ~~notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence.~~  
19 ~~The involuntary administration of medication must be reviewed by the committee 14 days and 90 days after the~~  
20 ~~beginning of the involuntary administration if medication is still being involuntarily administered.~~
- 21           ~~(e)(B) The court shall enter into the record a detailed statement of the facts upon which an order is made,~~  
22 ~~and if compliance with the individualized treatment plan is ordered involuntary administration is authorized,~~ the  
23 court shall also enter into the record specific findings that the state has proved an overriding justification for the  
24 order and that the treatment being ordered is medically appropriate on each element set forth in subsection (4).
- 25           ~~(3)(6) (a) The~~ At the time of commitment under subsection (3), the committing court shall, within 90 days  
26 of commitment, review set a date for a hearing to be held within 90 days of commitment for the purpose of  
27 reviewing the defendant's fitness to proceed. #
- 28           (b) (i) At the review hearing, if the court finds that the defendant is still unfit to proceed and that it does  
29 not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding  
30 against the defendant must be dismissed, except as provided in subsection (4) (7).

1           **(b)(ii)** If the court determines that the defendant lacks fitness to proceed because the defendant has a  
 2 mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the  
 3 court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to  
 4 those provisions.

5           **(c)(iii)** If the court determines that the defendant lacks fitness to proceed because the defendant has a  
 6 developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and  
 7 the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition  
 8 of the defendant pursuant to those provisions.

9           **(c)** At the review hearing, if the court finds that the defendant is still unfit to proceed but it appears that  
 10 the defendant will become fit to proceed within the reasonably foreseeable future, the court may recommit the  
 11 defendant for one additional period of no more than 90 days under the same procedure.

12           **(4)(7)** The fact that the defendant is unfit to proceed does not preclude any legal objection to the  
 13 prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation  
 14 of the defendant.

15           **(5)(8)** The expenses of ~~sending~~ transporting the defendant to the custody of the director of the  
 16 department of public health and human services to be placed in an appropriate facility of the department of public  
 17 health and human services, of keeping the defendant there, and of ~~bringing~~ transporting the defendant back are  
 18 payable by the office of court administrator as a district court expense as provided for in 3-5-901."

19  
 20           **Section 3.** Section 46-14-301, MCA, is amended to read:

21           **"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing**  
 22 **to determine release or discharge -- limitation on confinement.** (1) When a defendant is found not guilty for  
 23 the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is  
 24 an essential element of the offense charged, the court shall order a predisposition investigation in accordance  
 25 with 46-18-112 and 46-18-113, which must include:

26           **(a)** an investigation of the present mental condition of the defendant;

27           **(b)** an assessment of the current risk posed by the defendant to the defendant or others; and

28           **(c)** an assessment of the current treatment needs of the defendant, including whether the defendant  
 29 meets the civil commitment criteria of Title 53, chapter 20 or 21, and whether involuntary medication is necessary  
 30 to protect the defendant or others or to facilitate effective treatment FACILITATES EFFECTIVE TREATMENT AND,

1 CONSIDERING LESS INTRUSIVE ALTERNATIVES, IS NECESSARY TO PROTECT THE SAFETY OF THE DEFENDANT OR OTHERS.

2 (2) If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the  
3 defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers  
4 necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence  
5 presented at the trial must be considered by the court in making its determination.

6 ~~(2)~~(3) The court shall evaluate the nature of the offense with which the defendant was charged. If the  
7 offense charged:

8 (a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property  
9 damage; and the court ~~may find~~ finds that the defendant suffers from a mental disease or defect that currently  
10 renders the defendant a danger to the defendant or others. ~~If the court finds that the defendant presents a danger~~  
11 ~~to the defendant or others~~, the defendant may be committed to the custody of the director of the department of  
12 public health and human services to be placed in an appropriate mental health facility for custody, care, and  
13 treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in  
14 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

15 (b) ~~charged~~ did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or  
16 substantial property damage; or if the defendant does not currently present a danger to the defendant or others,  
17 the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53,  
18 chapter 20 or 21.

19 ~~(3)~~(4) A person committed to the custody of the director of the department of public health and human  
20 services must have a hearing within 180 days of confinement to determine the person's present mental condition  
21 and whether the person must be discharged or released or whether the commitment may be extended because  
22 the person continues to suffer from a mental disease or defect that renders the person a danger to the person  
23 or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers  
24 jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice  
25 of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally  
26 ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear  
27 and convincing evidence that the person may not be safely released because the person continues to suffer from  
28 a mental disease or defect that causes the person to present a substantial risk of:

29 (a) serious bodily injury or death to the person or others;

30 (b) an imminent threat of physical injury to the person or others; or

1 (c) substantial property damage.

2 ~~(4)~~(5) According to the determination of the court upon the hearing, the person must be discharged or  
3 released on conditions the court determines to be necessary or must be committed to the custody of the director  
4 of the department of public health and human services to be placed in an appropriate mental health facility for  
5 custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined  
6 under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment  
7 proceedings may be instituted in the manner provided in Title 53, chapter 21.

8 (6) If defendant is sentenced to the custody of the director of the department of public health and human  
9 services, the court may enter an order authorizing the chief medical officer to administer involuntary medication  
10 using the process as provided in 53-21-127(6) if:

11 (a) the defendant does not comply with prescribed medication; and

12 (b) the court finds that:

13 (i) the defendant meets the civil commitment criteria provided in 53-21-126; and

14 (ii) involuntary medication is necessary to protect the defendant or others or to facilitate effective  
15 treatment FACILITATES EFFECTIVE TREATMENT AND, CONSIDERING LESS INTRUSIVE ALTERNATIVES, IS NECESSARY TO  
16 PROTECT THE SAFETY OF THE DEFENDANT OR OTHERS.

17 ~~(5)~~(7) A professional person shall review the status of the person each year. At the time of the annual  
18 review, the director of the department of public health and human services or the person or the representative  
19 of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be  
20 held pursuant to the provisions of subsection ~~(3)~~ (4)."

21  
22 ~~Section 6. Section 46-14-312, MCA, is amended to read:~~

23 ~~"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the~~  
24 ~~commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect~~  
25 ~~as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.~~

26 ~~(2) If the court finds that the defendant at the time of the commission of the offense suffered from a~~  
27 ~~mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum~~  
28 ~~sentence prescribed by law for the offense need not apply. The court shall order a presentence investigation that~~  
29 ~~includes, in addition to any of the elements required by 46-18-112, an assessment of:~~

30 ~~(a) the defendant's current ability to appreciate the criminality of the defendant's conduct and to conform~~

1 ~~the defendant's conduct to the requirements of law;~~  
2 ~~—— (b) the current risk posed by the defendant to the defendant or others; and~~  
3 ~~—— (c) the current treatment needs of the defendant, including whether the defendant meets the civil~~  
4 ~~commitment criteria of Title 53, chapter 20 or 21, and whether involuntary medication is necessary to protect the~~  
5 ~~defendant or the public or to facilitate effective treatment.~~  
6 ~~—— (3) Upon receiving the presentence investigation report, the court shall:~~  
7 ~~—— (a) sentence the defendant to be committed to the custody of the director of the department of public~~  
8 ~~health and human services to be placed, after consideration of the recommendations of the professionals~~  
9 ~~providing treatment to the defendant and recommendations of the professionals who have evaluated the~~  
10 ~~defendant, in an appropriate correctional facility, mental health facility, as defined in 53-21-102, residential facility,~~  
11 ~~as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202, for custody, care, and~~  
12 ~~treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed~~  
13 ~~under subsection (1);~~  
14 ~~—— (b) defer or suspend a sentence to the custody of the director of the department of public health and~~  
15 ~~human services and place the defendant under the supervision of the department of corrections upon conditions~~  
16 ~~of probation which may include, in addition to conditions permitted under 46-18-201(4), mental health treatment~~  
17 ~~and medication, further evaluation, housing or residential restrictions, or other conditions that are supported by~~  
18 ~~a professional person's opinion and that the court finds adequate for protection of the defendant and the public;~~  
19 ~~or~~  
20 ~~—— (c) sentence the defendant to placement in a correctional facility for a definite period of time not to~~  
21 ~~exceed the maximum term of imprisonment that could be imposed under subsection (1);~~  
22 ~~—— (4) If the defendant is sentenced to the custody of the director of the department of public health and~~  
23 ~~human services, the court may authorize involuntary medication if it finds that the defendant meets the civil~~  
24 ~~commitment criteria of 53-21-126 and that involuntary medication is necessary to protect the defendant or the~~  
25 ~~public or to facilitate effective treatment. The provisions of 53-21-127(6) apply to an order under this subsection.~~  
26 ~~—— (5) If the defendant is sentenced to the custody of the director of the department of public health and~~  
27 ~~human services, the~~ The director may, after considering the recommendations of the professionals providing  
28 treatment to the defendant and recommendations of the professionals who have evaluated the defendant,  
29 subsequently transfer the defendant to another correctional, mental health, residential, or developmental  
30 disabilities facility; ~~that A transfer may be made if the director finds that the defendant suffers from a mental~~

1 ~~disease or defect that makes the defendant a danger to the defendant or others and:~~  
2 ~~—— (a) there is no reasonable treatment available for the mental disease or defect;~~  
3 ~~—— (b) the defendant refuses to cooperate with treatment;~~  
4 ~~—— (c) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect;~~  
5 ~~or~~  
6 ~~—— (d) another correctional, mental health, residential, or developmental disabilities facility will better serve~~  
7 ~~the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the~~  
8 ~~same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are~~  
9 ~~provided for:~~  
10 ~~—— (3)(6) Either the director or a defendant whose sentence has been imposed under subsection (2) (3) may~~  
11 ~~petition the sentencing court for review of the sentence if the a professional person certifies that:~~  
12 ~~—— (a) the defendant no longer suffers from a mental disease or defect;~~  
13 ~~—— (b) the defendant's mental disease or defect or developmental disability no longer renders the defendant~~  
14 ~~unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the~~  
15 ~~requirements of law; or~~  
16 ~~—— (c) the defendant suffers from a mental disease or defect or developmental disability but is not would~~  
17 ~~no longer be a danger to the defendant or others; or~~  
18 ~~—— (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the~~  
19 ~~defendant or others, but:~~  
20 ~~—— (i) there is no treatment available for the mental disease or defect;~~  
21 ~~—— (ii) the defendant refuses to cooperate with treatment; or~~  
22 ~~—— (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect~~  
23 ~~in a less restrictive placement under the supervision of the department of corrections and if the professional~~  
24 ~~person specifies conditions that may include probation, mental health treatment and medication, further~~  
25 ~~evaluation, housing or residential restrictions, or other conditions that are supported by the professional person's~~  
26 ~~opinion.~~  
27 ~~—— (4)(7) The On a petition for review of the sentence, the sentencing court may make any order not~~  
28 ~~inconsistent with its original sentencing authority, except that the length of confinement or supervision must be~~  
29 ~~equal to that of the original sentence. The~~  
30 ~~—— (8) A defendant sentenced under subsection (3) who is placed in an institutional setting must be~~

1 ~~examined by a professional person shall review the defendant's status each year at least annually. The~~  
 2 ~~professional person shall prepare a report addressing the defendant's current status and whether any of the~~  
 3 ~~conditions in subsection (6) have been met and shall mail a copy of the report to the prosecutor and the~~  
 4 ~~defendant's attorney."~~

5

6 **SECTION 4. SECTION 53-21-127, MCA, IS AMENDED TO READ:**

7 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering  
 8 from a mental disorder or does not require commitment within the meaning of this part, the respondent must be  
 9 discharged and the petition dismissed.

10 (2) If it is determined that the respondent is suffering from a mental disorder and requires commitment  
 11 within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must  
 12 be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday,  
 13 Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

14 (3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court  
 15 shall:

16 (a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral  
 17 health inpatient facility for a period of not more than 3 months;

18 (b) commit the respondent to a community facility or program or to any appropriate course of treatment,  
 19 which may include housing or residential requirements or conditions as provided in 53-21-149, for a period of:

20 (i) not more than 3 months; or

21 (ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the  
 22 community rather than a more restrictive placement in the state hospital if a respondent has been previously  
 23 involuntarily committed for inpatient treatment in a mental health facility and the court determines that the  
 24 admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as  
 25 provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

26 (c) commit the respondent to the Montana mental health nursing care center for a period of not more  
 27 than 3 months if the following conditions are met:

28 (i) the respondent meets the admission criteria of the center as described in 53-21-411 and established  
 29 in administrative rules of the department; and

30 (ii) the superintendent of the center has issued a written authorization specifying a date and time for

1 admission.

2 (4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect  
3 the respondent's custody or course of treatment for a period of more than 3 months.

4 (5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least  
5 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

6 (6) The court may authorize the chief medical officer of a facility or a physician designated by the court  
7 to administer appropriate medication involuntarily if the court finds that involuntary medication ~~is necessary to~~  
8 ~~protect the respondent or the public or to facilitate effective treatment~~ facilitates effective treatment and,  
9 considering less intrusive alternatives, is necessary to protect the safety of the patient or others. Medication may  
10 not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician  
11 designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible,  
12 a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review  
13 is not possible, within 5 working days after the beginning of the involuntary administration. The medication review  
14 committee must include at least one person who is not an employee of the facility or program. The patient and  
15 the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time,  
16 and place of the review and must be allowed to appear and give testimony and evidence. The involuntary  
17 administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning  
18 of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board  
19 of visitors and the director of the department of public health and human services must be fully informed of the  
20 matter within 5 working days after the beginning of the involuntary administration. The director shall report to the  
21 governor on an annual basis.

22 (7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this  
23 chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require  
24 commitment only to a community facility or program or an appropriate course of treatment, as provided in  
25 subsection (3)(b), and may not require commitment at the state hospital, a behavioral health inpatient facility, or  
26 the Montana mental health nursing care center.

27 (8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

28 (a) a detailed statement of the facts upon which the court found the respondent to be suffering from a  
29 mental disorder and requiring commitment;

30 (b) the alternatives for treatment that were considered;

- 1 (c) the alternatives available for treatment of the respondent;
- 2 (d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;
- 3 (e) the name of the facility, program, or individual to be responsible for the management and supervision  
4 of the respondent's treatment;
- 5 (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen  
6 from among other alternatives;
- 7 (g) if the order commits the respondent to the Montana mental health nursing care center, a finding that  
8 the respondent meets the admission criteria of the center and that the superintendent of the center has issued  
9 a written authorization specifying a date and time for admission; and
- 10 (h) if the order includes involuntary medication, the reason involuntary medication was chosen from  
11 among other alternatives."

12

- END -